



TOWN of BROOKLINE

Massachusetts

HUMAN RESOURCES OFFICE
333 Washington Street
Brookline, MA 02445
(617) 730-2120
www.BrooklineMA.gov

Sandra A. DeBow-Huang, Director
Human Resources Office

January 13, 2017

TO: Neil Wishinsky, Chair, Board of Selectmen
Mel Kleckner, Town Administrator
Sean Lynn-Jones, Chair, Advisory Committee

FROM: Sandra DeBow-Huang, Director
Human Resources Offices

SUBJ: Reserve Fund Transfer Request

We respectfully request a reserve fund transfer in the amount of \$210,000 to fund the Human Resources budget for outside Labor and Employment Counsel through the end of FY2017, specifically for the months November 2016 through June 2017.

Similar to last year, the high costs for outside counsel are due in large part to the costs of ongoing litigation in Federal Court; main table negotiations for the AFSCME and Police collective bargaining agreements; and costs of challenging two unusual requests for unemployment.

Litigation costs: The Town has a case that has just been moved from the Mass Commission Against Discrimination (MCAD) to Federal court. This matter has been disputed at lower, administrative levels since 2012 and is now going to trial. We are continuing to try to settle this matter but prior attempts have been unsuccessful. As we move closer to trying the case (Spring 2017), there will be substantial discovery costs if the matter does not settle. We have also had two atypical unemployment cases for the two employees who were terminated in October 2015 for significant misconduct. The Town challenged the employee's application for unemployment. The Div. of Unemployment Assistance denied the employees' claims due to the misconduct and they are each on their second level of appeal. These two employees have also filed for arbitrations, scheduled for winter and spring 2017. We anticipate each of those arbitrations will last four to five days with a cost of \$1200 per day and several days for writing the decision, as well as the cost for our labor attorney (a conservative estimate of \$15,000- \$20,000 ea).

The Town's Office of Human Resources is currently working closely with the AFSCME Union to resolve several matters that have arisen in a department. In one instance, the employee has continued to

engage in increasingly insubordinate conduct despite the Town's attempt to provide counsel and less punitive corrective action. Now that we are on a course of significant progressive discipline we continue to work with the union and the employee to get on a more constructive path to salvage the employment relationship. Unfortunately, the employee is being counseled by an outside entity which is counseling the employee to refuse all of the Town and Union's efforts to resolve the matter. Consistent with state labor law, we continue to work to resolve the matter within the four corners of the contract. However, it is clear that this outside entity will litigate the matter once we address the matter through the grievance and arbitration process. To date we have already spent approximately \$15,000 in labor costs on this matter and we are only in the early stages of the grievance process.

The Human Resources Office continues to work to foster positive labor relations with the unions, particularly AFSCME, which has resulted in reduced costs associated with unfair labor claims and grievances.

Bargaining Costs. The Town and its unions are at the end of the bargaining cycle for each of the contracts. Earlier in Fiscal year 2017, we settled the Fire Contract which was proceeding through arbitration at the JLMC's,¹ a costly and protracted process. We also negotiated and settled the AFSCME Library contract. However, we continue to bargain at the main table with three bargaining groups: Police, AFSCME School Traffic Supervisors and the Teamsters (Dispatchers). In summary, Fiscal Year 2017 is a year in which our negotiation costs are higher than other years when we do not have such obligations.

Generally, our budget can absorb the uptick in the bargaining costs, but due to the other significant costs of the MCAD/Federal Court claim, the significant unemployment appeals, and the anticipated arbitrations we will continue to have significant legal costs through the last eight months of the fiscal year.

Request: Typically, our monthly costs hover around \$12,000-\$18,000 per month. For the first four months of Fiscal Year 2017, our monthly legal bills have averaged almost \$35,000 each month. We also will have administrative arbitration costs. We are hopeful that we will be able to resolve or manage some of these matters. Therefore, we anticipate our legal costs for the remainder of the fiscal year to be about \$180,000 to \$210,000.

We continue to work diligently with the Town Counsel's office to refer employment law matters that are not rooted in our collective bargaining agreements. We are actively working with the Assistant Town Administrator and Town Counsel to discuss a better way to fund expensive litigation, including the costs of outside investigators. And, we continue to improve our labor relations with each of our unions to resolve cases before they come to arbitration with improved communication and collaboration; proactively working with the Departments and unions rather than using outside labor counsel.

¹ Joint Labor Management Commission administers binding arbitration for Police and Fire Unions in Massachusetts.